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IN THE

Supreme Court of the United States

BACHRODT CHEVROLET CO.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Bachrodt Chevrolet Co., prays that a Writ of Certiorari issue to review the final judgment of the United States Court of Appeals for the Seventh Circuit entered on May 19, 1975, holding that Petitioner's unilateral alteration in the working conditions of its employees constituted an unfair labor practice.

OPINIONS BELOW

The opinion of the court of appeals (Appendix A, Pet. App. 1a-8a) is an unpublished order and has not been reported. The supplemental decision of the Board on remand is reported at 205 NLRB 784 (Appendix B, Pet. App. 9a-16a). The order of the court of appeals remanding the case to the Board

is reported at —— F.2d ——, 83 LRRM 2528 (Appendix C, Pet. App. 17a-18a). The opinion of this Court remanding the initial decision of the court of appeals is reported at 411 U.S. 912 (Appendix D, Pet. App. 19a). The initial opinion of the court of appeals is reported at 468 F.2d 963 (Appendix F, Pet. App. 21a-40a). The initial decision of the Board and Trial Examiner are reported at 186 NLRB 1035 (Appendix G, Pet. App. 41a-78a).

JURISDICTION

The judgment of the court of appeals was entered on May 19, 1975. No petition for rehearing of that judgment was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals misapplied the applicable legal standard set forth in this Court's decision in *N.L.R.B.* v. *Burns International Security Services, Inc.*, when it found on a record limited to facts developed prior to the *Burns* decision, that Bachrodt, a successor employer, had hired the existing unit employees prior to announcing its initial terms of employment, and violated Section 8(a)(5) by adopting wages and other terms and conditions of employment which differed from those of the predecessor employer.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519,

29 U.S.C. 151, *et seq.*), are set forth in Appendix H (Pet. App. 79a-80a).

STATEMENT OF THE CASE

A. The Facts

Bachrodt Chevrolet Co. (herein "Bachrodt") entered into a Buy and Sell Agreement on October 28, 1969 (all dates refer to 1969) with Zimmerman, operator of a Chevrolet franchise at Freeport, Illinois, under the terms of which Bachrodt purchased some of the assets of Zimmerman. (O.A. 171).[1] Zimmerman was a party to a collective bargaining agreement covering service employees with the Union,[2] which agreement Bachrodt specifically did not assume. (O.A. 158-168, 184).

Bachrodt's takeover of Zimmerman's assets was effective Monday, November 10. On Friday, November 7, Bachrodt handed out applications for employment to Zimmerman's employees. (O.A. 81, 82, 143, 155, 156). On Monday, November 10, Bachrodt held a meeting of the employees, explained in what manner the employment terms of Bachrodt's operation would differ from Zimmerman's and also interviewed the employees. (O.A. 119-120). Bachrodt did not hire any of Zimmerman's employees until after he be-

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[1] "O.A." references are to the Original Appendix filed in the court of appeals when this case was initially before that court in No. 71-1354. "A." references are to the supplemental appendix filed in the court of appeals on remand in No. 73-2032. The Original Appendix contains the underlying evidence which was before the Board in both the original and supplemental proceedings herein.

[2] International Association of Machinists Local 1096.

came the owner of the business on Monday, November 10, and until after the interviews. After the employee meeting and the individual interviews were completed, a majority of Zimmerman's employees then went to work for Bachrodt. Zimmerman's body shop employees, however, were never employed by Bachrodt. (O.A. 194). In addition, two of Zimmerman's employees did not report for work on November 10. (O.A. 84).

On November 7, the Union sent a letter to Bachrodt (O.A. 195) advising that Zimmerman had an existing labor agreement with the Union and further setting forth the Union's position that the agreement was equally binding on Bachrodt as it was on Zimmerman. Bachrodt rejected the Union's demands. (O.A. 197) and the Union thereafter filed unfair labor practice charges alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act (herein "the Act").

B. The Decisions Below

In its initial decision, the National Labor Relations Board (herein "the Board") held that Bachrodt was a successor to Zimmerman; that Bachrodt had violated Section 8(a)(5) and (1) of the Act by unilaterally changing some conditions of employment and refusing to honor Zimmerman's collective bargaining agreement with the Union (Pet. App. 42a-43a, 61a-72a). The Board originally ordered Bachrodt to bargain with the Union, honor the existing contract, and make restitution for any benefits which may have been unlawfully withheld from employees because of Bachrodt's failure to abide by the existing

contract, and further for any benefits lost because of the unilateral changes (Pet. App. 72a-76a). There was no finding that Bachrodt had planned to retain all the employees in the unit prior to setting its initial employment terms.

Thereafter, in Case No. 71-1354, the Board applied to the court of appeals for enforcement of its order. The court ordered that the decision in the case be held in abeyance to await this Court's decision in *Burns International Security Services, Inc.* v. *N.L.R.B.*, which was subsequently decided in 406 U.S. 272. After the issuance of *Burns*, the court of appeals held that while Bachrodt was a successor employer, it was not bound by Zimmerman's contract with the Union (Pet. App. 29a-30a). However, the court held that Bachrodt violated Section 8(a)(5) by making unilateral changes in working conditions of employees (Pet. App. 30a-33a). Judge Stevens dissented for several reasons (Pet. App. 33a-40a) including his determination that he had doubts that it was "perfectly clear" that Bachrodt had planned to retain all of the employees in the unit prior to instituting its own conditions of employment (Pet. App. 37a-38a).

Bachrodt thereafter filed a petition for a writ of certiorari to the court of appeals with this Court (No. 72-1075) in which it argued that Bachrodt's setting of initial employment terms did not violate Section 8(a)(5) because there were not sufficient facts in the record to fulfill the requirement under *Burns* that such a violation would only occur in the exceptional circumstance "in which it is perfectly clear that the new employer plans to retain all employees in the unit" (406 U.S. at 294-295)

prior to his setting his initial terms and conditions of employment (No. 72-1075, pet. cert. at p. 7). On April 2, 1973, this Court granted Bachrodt's petition in the following language (Pet. App. 19a):

> The petition for certiorari is granted, the judgment is vacated, and the case is remanded to the Court of Appeals with instructions to remand the case to the National Labor Relations Board for such further proceedings as may be appropriate, in light of *NLRB* v. *Burns International Security Services, Inc.*, 406 U.S. 272 (1972); *FTC* v. *Sperry & Hutchinson Co.*, 405 U.S. 233, 245-250 (1972); *SEC* v. *Chenery Corp.*, 318 U.S. 80, 87-88 (1943).

The court of appeals, on May 8, 1973, remanded the case to the Board "for such further proceedings as may be appropriate in light of [*Burns*] . . ." (Pet. App. 17a-18a).

On remand, the Board requested the General Counsel and Bachrodt to submit statements of position. On August 27, 1973, the Board, without benefit of any further hearing or the taking of any further evidence, issued its Supplemental Decision and Order (Pet. App. 9a-16a) in which it rescinded its finding that Bachrodt was required to abide by its predecessor's collective bargaining agreement with the Union (Pet. App. 11a). The Board further concluded that there was "sufficient" evidence to warrant a finding that at the time Bachrodt announced and instituted the unilateral changes on November 10, it had hired its full complement of employees (Pet. App. 12a). The Board then held that Bachrodt had an obligation to bargain with the Union about its initial changes in the terms of employment, and had violated Sec-

tion 8(a)(5) by its failure to do so (Pet. App. 12a-14a).

The Board applied to the court of appeals for enforcement of its supplemental order. The court of appeals enforced the Board's order in an unpublished opinion (Pet. App. 1a-8a), holding that the evidence could be fairly interpreted to show that the employee interviews had been completed before the employees appeared for work on Monday, November 10, and prior to the announcement that conditions of employment would be different in certain respects. However, as we show below, the court of appeals also expressed certain reservations about the evidence thereby demonstrating that it had failed to follow the mandate of *Burns* that such a finding of a Section 8(a)(5) violation must be based upon evidence that is "perfectly clear."

REASONS FOR GRANTING THE WRIT

The court of appeals order enforcing the Board's supplemental order on remand in this case is contrary to the decision of this Court in *Burns International Security Services, Inc.* v. *N.L.R.B.*, 406 U.S. 272 (1972).

A. By Recognizing that the Board's Order was Supported by Ambiguous Evidence, the Court of Appeals Disregarded the *Burns* Requirement that Section 8(a)(5) Findings Such as This Must Be Premised on Evidence that is "Perfectly Clear."

This Court in *Burns* held that a successor may establish the initial basis on which it will hire the predecessor's employees without consulting their union representatives and without committing an unfair labor practice.

Burns further went on to say (pp. 294-295):

> "Although a successor employer is ordinarily free to set initial terms on which it will hire the employees of a predecessor, there will be instances in which it is *perfectly clear* that the new employer plans to retain all of the employees in the unit and in which it will be appropriate to have him initially consult with the employees' bargaining representative before he fixes terms. In other situations, however, it may not be clear until the successor employer has hired his full complement of employees that he has a duty to bargain with a union, since it will not be evident until then that the bargaining representative represents a majority of the employees in the union as required by § 9(a) of the Act, 29 U.S.C. § 159(a)." (Emphasis added).

Thus, it is plainly evident from *Burns* that unless the General Counsel presents evidence which makes it "perfectly clear" that the new employer plans to retain all of the employees in the bargaining unit, that employer may set its initial terms and conditions of employment without consultation with the employees' existing collective bargaining representative. Absent such clear evidence, the employer commits no unfair labor practice in making unilateral initial changes in employment terms.

The court of appeals, however, ignored this evidentiary standard set forth in *Burns* and enforced the Board's order based upon evidence which, even the court implicitly recognized, was substantially lacking in clarity. Thus, the court of appeals twice complained that the record was compiled before *Burns* was handed down and that the evidence therein

suffered as a result. The court stated (Pet. App. 2a):

> The Board [in its first decision] did not then have the benefit of the Supreme Court decision in [*Burns*]. The parties doubtless would have more specifically pursued at the hearing the factual inquiries which became more significant by reason of *Burns*.

and likewise (Pet. App. 7a):

> As already indicated, counsel would undoubtedly, if they had had *Burns* before them, have asked more pointedly about the sequence of interview, Monday morning opening, and announcement of changes.

In recognizing that the evidence before the Board was less than clear, the court stated that it did not fault the Board for attempting to resolve the issue on the evidence before it, because there had been no representation by Bachrodt as to what further testimony would be presented at another hearing (Pet. App. 7a).

From such comment, it is evident that the court improperly placed the burden on Bachrodt to prove that it did not plan to retain the employees rather than requiring the General Counsel to meet his burden of proving that it was "perfectly clear" that Bachrodt planned to do so. But a fair reading of this Court's remand would indicate that if the existing evidence was ambiguous, and the General Counsel was unable to clarify it, then the charge against Bachrodt should have been dismissed. Moreover, although it was not required of it, Bachrodt did urge, in its statement of position to the Board on remand,

that if there were any doubt that the facts of this case placed it outside the exception noted in *Burns*, then there should be a further hearing (Pet. App. 3a; A. 46).[3]

In addition to these general comments on the state of the evidence, the court of appeals also expressed its doubt that the sequence of events as found by the Board in this case was strongly supported by the record. Thus, while the court agreed with the Board that Bachrodt had completed its interviews and hiring prior to its announcement of changes in working conditions, it also pointed to significant contrary evidence that would have supported the conclusion that the hiring had not been so completed. The court noted that Mr. Bachrodt's testimony "is susceptible of the interpretation that the interviews and hiring took place on Monday" (Pet. App. 6a).[4]

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[3] As in its initial petition for certiorari (pet. cert. p. 7), Bachrodt pointed out the deficiencies in the record to the Board in its statement of position. Thus, Bachrodt explained that before closing the purchase of Zimmerman's assets on Monday, November 10, it had made absolutely no commitment to either Zimmerman or Zimmerman's employees that it would hire or retain them. Bachrodt's new terms were explained to the employees on Monday, but it did not know which employees it would hire until after the Monday interviews (A. 46). By thus indicating the deficiencies in the record, Bachrodt obviously was also expounding the type of evidence it would develop in a post-*Burns* hearing.

[4] The evidence, as set forth by the court (Pet. App. 6a, n. 3) indicated the following:

> "Q When Bachrodt Chevrolet took over on *November 10th*, what if anything did you do with regard to the men who had worked for Zimmerman with re-

The court also indicated that testimony of employee Bocker could be interpreted as putting his interview on Monday, November 10, and not on some previous day (Pet. App. 6a).[5]

In spite of these misgivings about the testimony of Bachrodt and Bocker, the court of appeals found

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gard to taking applications or anything else? *Just tell us what you did that day.* (Emphasis added).

"A [Bachrodt] Before took the place over we handed out applications to everybody. They were filled out and turned back in to us, and at that time we looked over each and then each man was interviewed. We decided whether to hire them, or they could make a decision on whether they wanted to work for me."

[5] The court set forth Bocker's testimony as follows (Pet. App. 6a, n. 4):

"Trial Examiner: When these items were changed on November 10th—Incidentally, were you told about the holiday change back on November 10th?

"The Witness: I believe I was, because I went in for an interview with Mr. Bachrodt and he told me what our new pay schedule would be and what the holidays would be and so forth.

"Trial Examiner: Do you know whether others were told on November 10th?

"The Witness: We had a group meeting in the rear service room, and there were items covered then. I can't recall exactly what they were.

"Trial Examiner: Were they the new conditions you were working under?

"The Witness: Many of them, yes."

Thus, if Bocker had been interviewed on November 10th, it is evident that there has been no showing that when Bachrodt took over the business on November 10, he had, at that time, a plan to "retain all of the employees in the unit" (406 U.S. at 295).

that the Board had "fairly" interpreted the testimony (Pet. App. 6a) and determined that there was sufficient evidence to find that Bachrodt was required to bargain over his initial terms of employment of his predecessor's employees (Pet. App. 7a).[6]

By enforcing the Board's decision on an incomplete and ambiguous record, and by improperly placing the burden on Bachrodt to come forward with additional evidence to clarify the record, the court of appeals ignored the evidentiary standard set forth in *Burns*.[7]

B. The Court of Appeals Decision Presents An Important Question of Federal Law Because It Is Based on an Overly-Broad Construction of the Exception to the *Burns* Rule Which Conflicts with the Decision of Another Court of Appeals and with Other Board Decisions.

It is clear from a reading of the Supreme Court's opinion in *Burns* that the "perfectly clear instance" dictum therein was intended to provide a narrow exception, and not a general qualification upon the basic right of a successor to set initial terms of employment without bargaining. The exception, we submit, was included merely as a hedge against some

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[6] Significantly the court of appeals never mentioned the *Burns* evidentiary standard (406 U.S. at 294-295) when it discussed the facts of this case, and never indicated that the evidence was "perfectly clear."

[7] The thrust of our argument stated above is not, of course, limited to an assertion that there simply was not substantial evidence to support the findings of the Board and court of appeals. The issue presented is not factual, but rather concerns the failure of the court below to apply the evidentiary standard set forth in *Burns*.

unusual set of circumstances in which application of the basic rule would be inappropriate. The routine purchase of some of the assets of an automobile agency is not the kind of unique situation that requires such exceptional treatment.

In *Burns* the Supreme Court held that it did not intend to impose on the new owner any duty to bargain or even to consult with the union before setting individual terms of employment. Indicative of this, the Court said, 406 U.S. at 287-288:

> "A potential employer may be willing to take over a moribund business only if he can make changes in corporate structure, composition of the labor force, work location, task assignment and nature of supervision. Saddling such an employer with the terms and conditions of employment contained in the old collective bargaining contract may make these changes impossible and may discourage and inhibit the transfer of capital."

The effect of the Board's and court of appeals' decisions in this case is to cast aside the rule enunciated in *Burns* which was to encourage the transfer of capital by freeing the purchaser of any obligation to that union, under either contract or statute, until after the successor had hired its new employees.

The decisions below further penalize a new owner for providing jobs for its predecessor's employees. At a minimum, they will increase the apprehension of predecessors' employees by forcing successor employers to defer any commitments to those employees until after they commence their operations. And more seriously, they surely encourage any purchaser

to terminate all employees of a predecessor and destroy the job security of the employees.

The Sixth Circuit in *N.L.R.B.* v. *Wayne Convalescent Center, Inc.*, 465 F.2d 1039 (1972), handed down a unanimous decision which sharply conflicts with the court of appeals decision in the instant case. In *Wayne* the predecessor employer negotiated a contract with the union several months prior to the new owner taking over the convalescent home through foreclosure proceedings. The new owner and successor had knowledge of the existence of both the union and the contract which had been negotiated by its predecessor. The successor retained substantially all of the predecessor's employees. The Sixth Circuit held that *Wayne* was a successor employer and was under a duty to bargain with the union. However, the court pointed out that making unilateral changes in conditions of employment was not a violation of such duty to bargain. Further, the court held that the successor was free to establish its own terms of employment initially without consulting the union. And the court held that the changes constituted the initial terms of employment, even though they were made one month after Wayne had begun operating the nursing home. The Sixth Circuit emphasized that under *Burns* (465 F.2d at 1043):

> "The successor employer must be allowed to be free to establish its initial terms of employment of the predecessor's employees. To hold otherwise would make necessary changes in the conditions of employment nearly impossible without lengthy bargaining, and further inhibit a potential successor's desire to acquire an unsuccessful business. The Board therefore cannot rely on

the unilateral changes in conditions of employment made by Wayne to find a refusal to bargain, and a violation of the Act."

Judge Stevens also recognized the importance of these considerations in his dissent to the court of appeals earlier decision in this case. Judge Stevens said (Pet. App. 38a-40a):

> "As I read the Court's dictum in *Burns*, it must have been 'perfectly clear' *prior to the closing* that all employees in the unit would be retained. Otherwise it would not be 'appropriate' —to use the Court's word—to saddle the new owner with any duty to bargain, or even to consult, with the union before setting initial terms of employment. The employment of union members *after* the closing may properly give rise to a duty to bargain with the union concerning subsequent changes from the initial terms of employment; I do not believe, however, that such post-closing hiring may retroactively establish a preclosing duty to bargain.
>
> "In short, I consider the brief excerpt from *Burns* as positing a narrow exception from the ordinary situation in which the successor has complete freedom to set initial terms. I regard this case as one involving an ordinary purchase transaction in which the new owner should not be penalized because he in fact provided jobs for substantially all of his predecessor's employees. . . .
>
> "As a practical matter I wonder how much difference there is between a holding that the new owner is bound by the terms of the old contract, and a holding that he is bound only until he has bargained to impasse with the union. No

doubt there are cases in which the impasse date would arise much sooner than the contract expiration date, but in my judgment the time interval between those dates is not critical importance in evaluating the policy factors involved. What is most important—and I believe *Burns* makes this clear—is the new owner's position at the time he takes over the acquired business. In the normal situation the *Burns* holding encourages the transfer of the capital by freeing the purchaser of any obligation to the union, either contractually or in the form of a duty to bargain, until after a new complement of employees has been hired. The *Burns* decision, in effect, finds greater public benefit in preserving the successor's ability to make immediate operating changes than in affording maximum job security to the employees of the purchased business. If only the time interval between the impasse date and the expiration date of a preexisting contract were on one side of the balance, it certainly would not have outweighed the interests of the employees in clearly defined job security." (Emphasis in original).

The court of appeals and the Board ignore these underlying reasons for the *Burns* rule in the present case and over-emphasize the exception to that rule, to the point where it becomes a broad limitation on the basic right the Supreme Court sought to protect. The effect of these decisions is to impose a precondition upon the successor's right to set the initial terms of employment for its operation.

Thus, the Board faults Bachrodt for not affirmatively notifying the Zimmerman employees prior to November 10 that new terms of employment would

be imposed and "that they were to accept them or not appear for work." (Pet. App. 13a). Similarly, the court of appeals observed that although the record shows that the changes in working conditions were announced to the employees on Monday, November 10, the record does "not suggest that Bachrodt on any previous day stated that the terms and conditions of employment might or would be different under the new owner." (Pet. App. 7a). Under such a requirement, the successor's rights are made to hinge, not upon whether it actually committed itself to hire all of the predecessor's employees, but on whether it clearly notified them in advance that they would not be hired unless they were willing to accept new terms of employment.

In short, the opinions below construe the dictum in the Supreme Court's opinion as establishing, not an exception, but a precondition to the general rule. Instead of looking to see whether the successor took some action which made it "perfectly clear" that it planned to retain all the employees in the unit, the Board and court focus on whether it took steps to make it clear it did *not* intend to retain them without changes. We submit that this approach distorts the meaning of *Burns* and is inconsistent with the overall thrust of this Court's decision.

This approach is particularly at odds with the further statement in *Burns* that the successor employer's bargaining obligation does not mature until it had selected its full complement, and until that time, the new employer has no obligation to bargain with the incumbent union over the initial employment terms the successor employer wishes to impose

(406 U.S. 295). Thus, even assuming the correctness of the Board's and court of appeals' determination that Bachrodt had completed hiring its work force when it took over the business on Monday, November 10 (Pet. App. 5a-6a, 14a), there is nothing in *Burns* that required Bachrodt to indicate to the employees prior to that time that it intended to make any changes in their terms and conditions of employment.

The importance of Supreme Court review of this case to the proper administration of the Act is indicated by subsequent policy statements of the Board in decisions which conflict directly with the Board and court of appeals decision here. The Board itself appears to have readjusted its interpretation of the *Burns* dictum in cases decided subsequent to its supplemental decision herein. Thus, in *Spruce-Up Corporation*, 209 NLRB No. 19 (decided February 28, 1974), applic. for enfct. on other grounds pending (4th Cir. Docket No. 74-1749), the Board majority expressly rejected any interpretation of the *Burns* caveat which, in effect, would require "an employer desirous of availing himself of the *Burns* right to set initial terms . . . to refrain from commenting favorably at all upon employment prospects of old employees for fear he would thereby forfeit his right to unilaterally set initial terms, a right to which the Supreme Court attaches great significance in *Burns*." Any such interpretation, the Board stated, "would be subject to abuse, and would, we believe, encourage employer action contrary to the purposes of this Act and lead to results which we feel sure the Court did not intend to flow from its decision in *Burns*." For, as the Board continued:

> ". . . the more cautious employer would probably be well advised not to offer employment to at least some of the old work force under such a decisional precedent. We do not wish—nor do we believe the Court wished—to discourage continuity in employment relationships for such legalistic and artificial considerations."

Accordingly, the Board in *Spruce-Up* announced that:

> "*We believe the caveat in Burns, therefore, should be restricted to circumstances in which the new employer has either actively or, by tacit inference, misled employees into believing they would all be retained without change in their wages, hours, or conditions of employment*, or at least to circumstances where the new employer, unlike the Respondent here, has failed to clearly announce its intent to establish a new set of conditions prior to inviting former employees to accept employment." (Emphasis added.)

Although one may seriously question the internal consistency of this formulation, we believe that the italicized portion of the Board's statement represents a proper interpretation of the *Burns* rule. It would ensure the basic right of the successor to set its own initial employment conditions except in those instances where it has actually done something to commit itself in advance to hiring the former unit employees. See also *Greengate Mall, Inc.*, 209 NLRB No. 2 (decided February 14, 1974).[8]

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[8] The Board's *Spruce-Up* policy was further explained by the Board in *Antia Shops, Inc.*, 211 NLRB No. 74 (decided June 12, 1974). (No misleading of employees seen where there was no advance notice to employees of the new terms, but also no advance commitment as to their employment); and

In the instant case, as in *Spruce-Up*, *supra*, the new employer (Bachrodt) did nothing, either actively or tacitly, to mislead the employees into believing that they would all be retained without change in their terms of employment. As we have demonstrated, the only action Bachrodt is shown by this record to have taken prior to the November 10 meeting, where new terms of employment were announced, was the passing out of applications to Zimmerman's employees. This was clearly not enough to amount to a commitment on Bachrodt's part to hire them all without any changes.

Furthermore, even assuming *arguendo* that the evidence did show that Bachrodt had interviewed the employees on Friday, November 7, and told them all to report to work on Monday, we do not believe this action, by itself, could be construed as a promise to retain them all on the same terms as they had previously worked. It is not contended that Bachrodt ever said anything in these interviews about paying the same wages, keeping the same hours, or maintaining the same working conditions. Nor can the Board point to any conduct by Bachrodt which implied that this would be the case. When the first thing an employer does upon taking over a new business is to

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in *Boeing Co.*, 214 NLRB No. 32 (decided November 1, 1974), petition for review pending (D.C. Cir. Docket No. 74-1056) (Rejected the General Counsel's contention that the employer had a "perfectly clear" plan to retain a substantial majority of the employees, even though it was undisputed that the employer intended to hire all or substantially all of the incumbent employees, because the employer's "intentions" were tied to lower rates and benefits which the employees might not accept.)

call the predecessor's employees together and announce that it will not be operating under the same terms as its predecessor, it requires very clear evidence to conclude that it had actively or tacitly committed itself to do just the opposite. There is no such evidence here. Accordingly, the Board's decision in the instant case imposes a more stringent bargaining obligation upon Bachrodt than was imposed upon the employer in *Spruce-Up*. Such divergent applications of the federal labor laws are manifestly appropriate for review by this Court.

Because the decision of the court of appeals in the instant case improperly construes the *Burns* exception and conflicts with another court of appeals decision, as well as with subsequent Board interpretations of the *Burns* decision, this case involves important issues of federal law which should be clarified and settled by this Court.

CONCLUSION

For the foregoing reasons, it is urged that this Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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